

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

United States of America

v.

Bethann Kierczak

Case No. Case: 2:21-mj-30457
Assigned To : Unassigned
Assign. Date : 9/27/2021
USA V. SEALED MATTER (CMP)(CMC)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 22, 2021- Present in the county of Wayne in the
Eastern District of Michigan, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 641	theft of government property
18 U.S.C. § 669	Theft/Embezzlement- Health Care

This criminal complaint is based on these facts:

Continued on the attached sheet.

Complainant's signature

Ray White- Special Agent

Printed name and title

Sworn to before me and signed in my presence
and/or by reliable electronic means.

Date: September 27, 2021

City and state: Detroit, MI

Judge's signature

Elizabeth A. Stafford- U.S Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF
CRIMINAL COMPLAINT AND ARREST WARRANT**

I, Ray A. White (Affiant), a Special Agent with the United States Department of Veterans Affairs (VA), Office of Inspector General (OIG), Criminal Investigations Division, being duly sworn, do hereby state and depose as follows:

1. Your Affiant has been employed in the law enforcement arena for more than 22 years. I am currently employed as a Special Agent with the VA OIG assigned to the Battle Creek Resident Agency, Battle Creek, MI. Prior to my employment with the VA OIG, I was employed as a Special Agent with the United States Postal Service, OIG, Memphis, TN and Atlanta, GA; Air Force Office of Special Investigations (AFOSI), Atlanta, GA, and the Detroit Police Department, Detroit, MI. As a Special Agent, I have received extensive training in criminal investigation procedures, criminal law, and in the investigation of crimes committed against the United States. These investigations and activities involved healthcare fraud, benefits fraud, and the theft of government property. Additionally, as an agent with the VA OIG, I am authorized to investigate violations of the laws of the United States and execute warrants issued under the authority of the United States.

2. This affidavit is provided in support of an application for a criminal complaint and arrest warrant charging BETHANN KIERCZAK, 37, Southgate, Michigan with violating Title 18 U.S.C. § 641, which provides in pertinent part:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof...

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the

counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

3. This affidavit is additionally provided in support of an application for a criminal complaint and arrest warrant charging BETHANN KIERCZAK, 37, Southgate, Michigan with violating Title 18 U.S.C. § 669, which provides in pertinent part:

(a) Whoever knowingly and willfully embezzles, steals, or otherwise without authority converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, shall be fined under this title or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of \$100 the defendant shall be fined under this title or imprisoned not more than one year, or both.

(b) As used in this section, the term "health care benefit program" has the meaning given such term in section 24(b) of this title."

4. Title 18 U.S.C. § 24(b) states that a "*health care benefit program*' means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract."

5. For the reasons set forth below, I respectfully submit that this affidavit sets forth sufficient probable cause to believe that between May 22, 2021 and the date of this affidavit, BETHANN KIERCZAK, unlawfully and knowingly engaged in a scheme to defraud the U.S. Department of Veterans Affairs and U. S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), in violation of both 18 U.S.C. §§ 641 and 669. The statements contained in this affidavit are based on my experience and background as a Special Agent, Police Officer and on information provided to me by other law enforcement officers and witnesses. I have not set forth all the facts known concerning this investigation;

rather, I have only included the facts believed necessary to establish probable cause to charge BETHANN KIERCZAK with the above-mentioned violations.

BACKGROUND

6. On or about January 31, 2020, the Secretary of the United States Department of Health and Human Services (HHS) declared a national public health emergency under 42 U.S.C. § 247d as a result of the spread of a novel coronavirus, SARS-CoV-2, also known as “COVID-19,” to and within the United States. On or about March 13, 2020, the President of the United States issued Proclamation 9994 declaring a national emergency beginning on March 1, 2020, as a result of the rapid spread of COVID-19 within the United States. As part of the response to the pandemic, the federal government provided funding to pharmaceutical and biotechnology companies capable of developing a vaccine for COVID-19.

7. The United States Food and Drug Administration approved the Pfizer COVID-19 vaccine for emergency use on or about December 11, 2020 and the Moderna COVID-19 vaccine for emergency use on or about December 18, 2020. Each was approved as a two-dose regimen.

8. Thereafter, the Centers for Disease Control and Prevention (CDC) prepared for widespread administration of the COVID-19 vaccines, including at retail-based clinics, local health departments, and at U.S. Department of Veterans Affairs medical facilities. To do so, the U.S. Government purchased vaccine doses from Pfizer and Moderna. The CDC and HHS also developed rules and protocols for the entities that would administer the COVID-19 vaccine at these locations. For tracking purposes, the government also contracted with companies to print COVID-19 vaccination cards according to certain CDC specifications, including a requirement the cards include a space to record the dates of the first and second vaccine doses (CDC

vaccination record cards). The cards were distributed as part of the vaccine ancillary kits sent to each vaccine distribution location.

9. The VA qualifies as a health care benefit program under Title 18 USC § 24(b).
10. The HHS and CDC qualify as health care benefit programs under Title 18 USC § 24(b) as it relates to authority pursuant to Title 42 USC § 247d.

PROBABLE CAUSE

11. On August 12, 2021, your Affiant received information from U.S. Department of Veterans Affairs, Detroit, MI (DVAMC), VA Police Services, who reported receiving a complaint from a Confidential Source (CS), who alleged that BETHANN KIERCZAK, Registered Nurse, DVAMC (KIERCZAK), was forging and selling CDC marked Covid-19 vaccination cards she stole from the DVAMC, to veterans and non-veterans for profit. In support of their assertion, the CS also provided copies of excerpts from their Facebook Messenger conversations with KIERCZAK regarding the theft and sale of vaccination cards.

12. Continuing on August 12, 2021, your Affiant spoke with DVAMC Police Services who confirmed KIERCZAK's position as a Registered Nurse at the facility and that she had access to the vaccination cards as a result of her responsibilities for administering the COVID-19 vaccinations to VA patients and employees.

13. On or about August 13, 2021, your affiant spoke with the CS regarding the aforementioned allegation. The CS advised that on May 22, 2021 and June 3, 2021, the CS and KIERCZAK held discussions via Facebook Messenger regarding the purchase of a vaccination card for a mutual acquaintance, as well as sales made to unknown individuals. A review of the messages disclosed the following:

a. May 22, 2021:

CS: "If you don't forget to grab me about 10 of those things.. cough cough" [winking emoji] Ya know"

KIERCZAK: "I am here, I will do my best, this pharmacist seems to be a little protective of the cards, lol"

CS: "Ok lol"

KIERCZAK: "But if I can't today I will have more chances through next week"

CS: "That's cool I just wanted one for [Individual-1]"

KIERCZAK: "I will get em"

CS: "Rockstar"

b. June 3, 2021:

CS: "Can you get me just ONE of them damn vaccination cards."

KIERCZAK: "Yes."

CS wrote: "Ok. [Individual-2]'s bugging me asking if I know anyone, I said I'd ask around. Apparently his baby momma has a PPO against him, but her aunt said if he has the vaccination then she will bring the kids to him so he can see them."

KIERCZAK: "Ok, I can get him one, I need his first and last name and birthdate, I will fill it out."

CS: Ok

KIERCZAK: "So the dates need to be current?"

KIERCZAK: "Like last month?"

CS: "I'll ask"

KIERCZAK: "Ok"

KIERCZAK: "Is that the store number after the wrod [sic] Wallgreens?"

CS: "I think so"

KIERCZAK: "Ok" Tell him I charge \$150 for these, so he owes you a favor.
[laughing emoji]

CS: "Damn have u actually been selling them?"

KIERCZAK: "[Individual-3]'s mom has a friend who wanted 12, I charged him \$100 each, I gave her \$200"

"Pain [sic] for [minor-1]'s orthodontist treatment well the down payment"

CS: "Oh nice"

CS: "Don't you think that they would be able to get a system where they can look up to see if you actually got it or not?"

CS: "Like aside from the card...there's def records out there"

KIERCZAK: "Ok I figured it would have to be like a court issue"

14. On August 16, 2021, acting under the direction of law enforcement for the first time, the CS sent a text message to KIERCZAK in an attempt to purchase a vaccination card. The following is an excerpt from their conversation:

CS: "This is CS, I'm not calling to start shit. Do you want these chairs back and do you want [Minor-2]'s bike back?"

KIERCZAK: "Yes please"

CS: "Ok. Do you still have [Individual-2]'s vax card? Hes desperate and I can give u the money for it I told him we don't talk anymore and he'd probably have to pay for it now"

KIERCZAK: "He can have it"

CS: "Well, I appreciate that but I will throw you some cash for doing it"

KIERCZAK: "Not all dogs are the same. Why feed them the same? Ok I wont be come [sic] from Thursday to Sunday I need his 1st and last name and birthday to put on the card"

CS: "Ok. I'm pretty busy as well, so we will catch up soon."

KIERCZAK: "Want me to come after? Want me to come after?"

CS: "No, not toady. I'm not feeling that great, I'm actually gonna lay down her soon. I'll gather all your stuff up in the next few days, I'll be working a lot.

KIERCZAK: "That's fine whenever you can get myself together is no big deal but I can always drop the card off and just leave it in your mailbox"

CS: "No don't wast the trip. Ill just come and get it when I drop your stuff off. Hes not gonna be able to see his kids for like another month anyways so it's not a HUGE desperation at this very sec"

15. Later that same day, KIERCZAK delivered a blank vaccination card to the CS at their residence, at no cost. The CS advised that KIERCZAK refused to complete the vaccine card, but verbally provided the information to the CS so that they could complete the card. The CS advised that KIERCZAK supplied the manufacturer name, lot number, and dates that the vaccine doses would have been administered. The CS captured the information on an index card.

16. On August 24, 2021, your Affiant retrieved the blank vaccination card and index card from the CS. The index card indicated that Moderna vaccine lot number 039B21A was administered on July 19, 2021 and Moderna vaccine lot number 009C21A was administered on August 17, 2021. According to the CS, KIERCZAK stated that she could provide additional vaccine cards upon request.

17. On September 2, 2021, your Affiant received confirmation from the DVAMC that Moderna vaccine lot number 039B21A was shipped to the DVAMC from pharmaceutical distributor McKesson on April 11, 2021 and that Moderna vaccine lot number 009C21A was shipped to the facility from pharmaceutical distributor McKesson on April 18, 2021.

18. On September 8, 2021, again acting under the direction of law enforcement, the CS placed a consensually monitored call to KIERCZAK to negotiate the purchase of vaccination

cards. KIERCZAK refused to discuss the matter over the phone and advised that she would meet the CS at their residence, due to her fear that the calls may have been recorded.

19. Later that same day, KIERCZEK proceeded to the home of the CS to discuss the matter in person. The CS digitally recorded the meeting utilizing their personal cellular phone. During the conversation, the CS advised that they were attempting to purchase multiple COVID-19 vaccination cards for interested parties. KIERCZAK indicated that she currently had five (5) vaccination cards in her desk drawer at work that she would sell for \$200 per card. KIERCZAK also offered to pay the CS a portion of the proceeds for their assistance. Further, KIERCZAK advised that she had discussed providing vaccination cards to other individuals in the past, and that she typically communicated with the buyers via Facebook Messenger. Near the end of the conversation, KIERZCAK advised the CS to call her (rather than text) when the CS was ready to move forward with the transaction, so that in case anyone was to say something, it would be less likely that KIERZCAK and the CS would get in trouble. KIERZCAK then expressed regret at having communicated with other individuals in writing already.

20. On September 20, 2021, again acting under the direction of law enforcement, the CS placed a consensually monitored call to KIERCZAK to coordinate the purchase of the vaccination cards. During the conversation, KIERCZAK agreed meet the CS at their residence to complete the transaction.

21. Later that same day, your Affiant, with the assistance of other law enforcement agents, executed an operation that resulted in KIERCZAK selling five (5) Covid-19 vaccination cards to the CS at a cost of \$200 per card. In exchange for the cards, the CS paid KIERCZAK \$1000 in U.S. currency, which was provided by law enforcement in furtherance of the operation. Upon completion of the meeting, the CS relinquished five (5) blank CDC vaccination cards, \$300 in

U.S. currency, that was paid to the CS by KIERCZAK as a kickback for their assistance, and an 8 1/2 x 11 sheet of paper depicting the following eight (8) lot numbers: 039B21A, 058E21A, 009C21A, 058E221A, 025C21A, 011D21A, 019B21A, 030A21A. Near the end of the exchange, KIERCZAK asked the CS if they had anyone else interested and stated “it’s okay if not cause I’ve got a couple more people who want some, too.”

22. On September 21, 2021, your Affiant received confirmation from the DVAMC that the lot numbers provided by KIERCZAK to the CS were associated with Moderna COVID-19 vaccine shipments from drug manufacturer McKesson to the DVAMC. Specifically, the DVAMC verified the following:

- Lot number 030A21A was received at the facility on February 28, 2021
- Lot number 019B21A was received at the facility on March 23, 2021
- Lot number 039B21A was received at the facility on April 11, 2021
- Lot number 009C21A was received at the facility on April 18, 2021
- Lot number 058E21A was received at the facility on August 29, 2021

23. The DVAMC could not confirm whether lot numbers 025C21A and 011D21A were ever received at the facility.

CONCLUSION

24. Based upon my training and experience and the facts stated herein, your Affiant respectfully submits that there is probable cause to believe that BETHANN KIERCZAK violated Title 18, United States Code, Section 641, which forbids any person from embezzl[ing], steal[ing], purloin[ing], or knowingly convert[ing] to his use or the use of another, or without authority, sell[ing], convey[ing], or dispose[ing], of any record, voucher, money, or thing of value of the United States or of any department or agency thereof; and violated Title 18, United

States Code, Section 669, which forbids any person from knowingly and willfully embezzling, stealing, or otherwise without authority converting to the use of any person other than the rightful owner, or intentionally misapplying any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, such as the VA, HHS, and/or CDC. Therefore, your Affiant respectfully requests that this court issue a warrant for her arrest.



Special Agent Ray A. White
Office of Inspector General
Department of Veterans Affairs
Criminal Investigations Division

Sworn to before me and signed in my presence and/or by reliable electronic means.



Hon. Elizabeth A. Stafford
United States Magistrate Judge